

113TH CONGRESS
1ST SESSION

H. R. 1797

IN THE SENATE OF THE UNITED STATES

JUNE 19, 2013

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend title 18, United States Code, to protect pain-capable unborn children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Pain-Capable Unborn
3 Child Protection Act”.

4 **SEC. 2. LEGISLATIVE FINDINGS AND DECLARATION OF**
5 **CONSTITUTIONAL AUTHORITY FOR ENACT-**
6 **MENT.**

7 Congress finds and declares the following:

8 (1) Pain receptors (nociceptors) are present
9 throughout the unborn child’s entire body and
10 nerves link these receptors to the brain’s thalamus
11 and subcortical plate by no later than 20 weeks after
12 fertilization.

13 (2) By 8 weeks after fertilization, the unborn
14 child reacts to touch. After 20 weeks, the unborn
15 child reacts to stimuli that would be recognized as
16 painful if applied to an adult human, for example,
17 by recoiling.

18 (3) In the unborn child, application of such
19 painful stimuli is associated with significant in-
20 creases in stress hormones known as the stress re-
21 sponse.

22 (4) Subjection to such painful stimuli is associ-
23 ated with long-term harmful neurodevelopmental ef-
24 fects, such as altered pain sensitivity and, possibly,
25 emotional, behavioral, and learning disabilities later
26 in life.

1 (5) For the purposes of surgery on unborn chil-
2 dren, fetal anesthesia is routinely administered and
3 is associated with a decrease in stress hormones
4 compared to their level when painful stimuli are ap-
5 plied without such anesthesia. In the United States,
6 surgery of this type is being performed by 20 weeks
7 after fertilization and earlier in specialized units af-
8 filiated with children's hospitals.

9 (6) The position, asserted by some physicians,
10 that the unborn child is incapable of experiencing
11 pain until a point later in pregnancy than 20 weeks
12 after fertilization predominately rests on the as-
13 sumption that the ability to experience pain depends
14 on the cerebral cortex and requires nerve connec-
15 tions between the thalamus and the cortex. However,
16 recent medical research and analysis, especially since
17 2007, provides strong evidence for the conclusion
18 that a functioning cortex is not necessary to experi-
19 ence pain.

20 (7) Substantial evidence indicates that children
21 born missing the bulk of the cerebral cortex, those
22 with hydranencephaly, nevertheless experience pain.

23 (8) In adult humans and in animals, stimula-
24 tion or ablation of the cerebral cortex does not alter

1 pain perception, while stimulation or ablation of the
2 thalamus does.

3 (9) Substantial evidence indicates that struc-
4 tures used for pain processing in early development
5 differ from those of adults, using different neural
6 elements available at specific times during develop-
7 ment, such as the subcortical plate, to fulfill the role
8 of pain processing.

9 (10) The position, asserted by some commenta-
10 tors, that the unborn child remains in a coma-like
11 sleep state that precludes the unborn child experi-
12 encing pain is inconsistent with the documented re-
13 action of unborn children to painful stimuli and with
14 the experience of fetal surgeons who have found it
15 necessary to sedate the unborn child with anesthesia
16 to prevent the unborn child from engaging in vig-
17 orous movement in reaction to invasive surgery.

18 (11) Consequently, there is substantial medical
19 evidence that an unborn child is capable of experi-
20 encing pain at least by 20 weeks after fertilization,
21 if not earlier.

22 (12) It is the purpose of the Congress to assert
23 a compelling governmental interest in protecting the
24 lives of unborn children from the stage at which sub-

1 substantial medical evidence indicates that they are ca-
2 pable of feeling pain.

3 (13) The compelling governmental interest in
4 protecting the lives of unborn children from the
5 stage at which substantial medical evidence indicates
6 that they are capable of feeling pain is intended to
7 be separate from and independent of the compelling
8 governmental interest in protecting the lives of un-
9 born children from the stage of viability, and neither
10 governmental interest is intended to replace the
11 other.

12 (14) Congress has authority to extend protec-
13 tion to pain-capable unborn children under the Su-
14 preme Court’s Commerce Clause precedents and
15 under the Constitution’s grants of powers to Con-
16 gress under the Equal Protection, Due Process, and
17 Enforcement Clauses of the Fourteenth Amendment.

18 **SEC. 3. PAIN-CAPABLE UNBORN CHILD PROTECTION.**

19 (a) IN GENERAL.—Chapter 74 of title 18, United
20 States Code, is amended by inserting after section 1531
21 the following:

22 **“§ 1532. Pain-capable unborn child protection**

23 “(a) UNLAWFUL CONDUCT.—Notwithstanding any
24 other provision of law, it shall be unlawful for any person

1 to perform an abortion or attempt to do so, unless in con-
2 formity with the requirements set forth in subsection (b).

3 “(b) REQUIREMENTS FOR ABORTIONS.—

4 “(1) The physician performing or attempting
5 the abortion shall first make a determination of the
6 probable post-fertilization age of the unborn child or
7 reasonably rely upon such a determination made by
8 another physician. In making such a determination,
9 the physician shall make such inquiries of the preg-
10 nant woman and perform or cause to be performed
11 such medical examinations and tests as a reasonably
12 prudent physician, knowledgeable about the case and
13 the medical conditions involved, would consider nec-
14 essary to make an accurate determination of post-
15 fertilization age.

16 “(2)(A) Except as provided in subparagraph
17 (B), the abortion shall not be performed or at-
18 tempted, if the probable post-fertilization age, as de-
19 termined under paragraph (1), of the unborn child
20 is 20 weeks or greater.

21 “(B) Subject to subparagraph (C), subpara-
22 graph (A) does not apply if—

23 “(i) in reasonable medical judgment, the
24 abortion is necessary to save the life of a preg-
25 nant woman whose life is endangered by a

1 physical disorder, physical illness, or physical
2 injury, including a life-endangering physical
3 condition caused by or arising from the preg-
4 nancy itself, but not including psychological or
5 emotional conditions; or

6 “(ii) the pregnancy is the result of rape, or
7 the result of incest against a minor, if the rape
8 has been reported at any time prior to the abor-
9 tion to an appropriate law enforcement agency,
10 or if the incest against a minor has been re-
11 ported at any time prior to the abortion to an
12 appropriate law enforcement agency or to a
13 government agency legally authorized to act on
14 reports of child abuse or neglect.

15 “(C) Notwithstanding the definitions of ‘abor-
16 tion’ and ‘attempt an abortion’ in this section, a
17 physician terminating or attempting to terminate a
18 pregnancy under an exception provided by subpara-
19 graph (B) may do so only in the manner which, in
20 reasonable medical judgment, provides the best op-
21 portunity for the unborn child to survive, unless, in
22 reasonable medical judgment, termination of the
23 pregnancy in that manner would pose a greater risk
24 of—

25 “(i) the death of the pregnant woman; or

1 “(ii) the substantial and irreversible phys-
2 ical impairment of a major bodily function, not
3 including psychological or emotional conditions,
4 of the pregnant woman;
5 than would other available methods.

6 “(c) CRIMINAL PENALTY.—Whoever violates sub-
7 section (a) shall be fined under this title or imprisoned
8 for not more than 5 years, or both.

9 “(d) BAR TO PROSECUTION.—A woman upon whom
10 an abortion in violation of subsection (a) is performed or
11 attempted may not be prosecuted under, or for a con-
12 spiracy to violate, subsection (a), or for an offense under
13 section 2, 3, or 4 of this title based on such a violation.

14 “(e) DEFINITIONS.—In this section the following
15 definitions apply:

16 “(1) ABORTION.—The term ‘abortion’ means
17 the use or prescription of any instrument, medicine,
18 drug, or any other substance or device—

19 “(A) to intentionally kill the unborn child
20 of a woman known to be pregnant; or

21 “(B) to intentionally terminate the preg-
22 nancy of a woman known to be pregnant, with
23 an intention other than—

1 “(i) after viability to produce a live
2 birth and preserve the life and health of
3 the child born alive; or

4 “(ii) to remove a dead unborn child.

5 “(2) ATTEMPT AN ABORTION.—The term ‘at-
6 tempt’, with respect to an abortion, means conduct
7 that, under the circumstances as the actor believes
8 them to be, constitutes a substantial step in a course
9 of conduct planned to culminate in performing an
10 abortion.

11 “(3) FERTILIZATION.—The term ‘fertilization’
12 means the fusion of human spermatozoon with a
13 human ovum.

14 “(4) PERFORM.—The term ‘perform’, with re-
15 spect to an abortion, includes induce an abortion
16 through a medical or chemical intervention including
17 writing a prescription for a drug or device intended
18 to result in an abortion.

19 “(5) PHYSICIAN.—The term ‘physician’ means
20 a person licensed to practice medicine and surgery
21 or osteopathic medicine and surgery, or otherwise le-
22 gally authorized to perform an abortion.

23 “(6) POST-FERTILIZATION AGE.—The term
24 ‘post-fertilization age’ means the age of the unborn

1 child as calculated from the fusion of a human
2 spermatozoon with a human ovum.

3 “(7) PROBABLE POST-FERTILIZATION AGE OF
4 THE UNBORN CHILD.—The term ‘probable post-fer-
5 tilization age of the unborn child’ means what, in
6 reasonable medical judgment, will with reasonable
7 probability be the postfertilization age of the unborn
8 child at the time the abortion is planned to be per-
9 formed or induced.

10 “(8) REASONABLE MEDICAL JUDGMENT.—The
11 term ‘reasonable medical judgment’ means a medical
12 judgment that would be made by a reasonably pru-
13 dent physician, knowledgeable about the case and
14 the treatment possibilities with respect to the med-
15 ical conditions involved.

16 “(9) UNBORN CHILD.—The term ‘unborn child’
17 means an individual organism of the species homo
18 sapiens, beginning at fertilization, until the point of
19 being born alive as defined in section 8(b) of title 1.

20 “(10) WOMAN.—The term ‘woman’ means a fe-
21 male human being whether or not she has reached
22 the age of majority.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 at the beginning of chapter 74 of title 18, United States

1 Code, is amended by adding at the end the following new
2 item:

“1532. Pain-capable unborn child protection.”.

3 (c) CHAPTER HEADING AMENDMENTS.—

4 (1) CHAPTER HEADING IN CHAPTER.—The
5 chapter heading for chapter 74 of title 18, United
6 States Code, is amended by striking “**PARTIAL-**
7 **BIRTH ABORTIONS**” and inserting “**ABOR-**
8 **TIONS**”.

9 (2) TABLE OF CHAPTERS FOR PART I.—The
10 item relating to chapter 74 in the table of chapters
11 at the beginning of part I of title 18, United States
12 Code, is amended by striking “Partial-Birth Abor-
13 tions” and inserting “Abortions”.

Passed the House of Representatives June 18, 2013.

Attest:

KAREN L. HAAS,

Clerk.